Finding 04-1

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response
Governor's Office has no role in determining cost savings.	**Clear Misstatement of Law** • Legislation clearly provides that Governor's Office must approve all savings amounts after CMS designates anticipated savings.
CMS improperly made payments from non-GRF funds.	**Omission of Relevant Facts** **Clear Misstatement of Law** **Misleading and Illogical Conclusion** • Legislation does not limit payments to General Revenue Fund (GRF). • Indeed, it requires quite the opposite: payments must be made from funds where savings are anticipated to occur. • Here, savings occurred from non-GRF funds and thus were *required* to be paid from those funds. (See 04-1 Attachment A)
CMS improperly made payments during lapse period.	**Omission of Relevant Facts** **Clear Misstatement of Law** **Misleading and Illogical Conclusion** • Legislation does not prohibit or limit payments during lapse period. • Anticipated savings were correctly determined and approved. • The timing of these savings was consistent with their determination and approval.
Efficiency cannot occur from funded vacant headcount reductions.	**Clear Misstatement of Law** **Misleading and Illogical Conclusion** • Nothing in legislation suggests that efficiencies cannot occur from headcount reductions. • Indeed, headcount reductions are one of the key ways of realizing efficiencies clearly recognized by the legislature.
There are more than the three examples of improper payments; implies all $24 million in payments were improper.	**No Factual Basis** **Misleading Conclusion** • Auditor General Staff confirmed at Pre-Exit Conference that these are the only 3 allegations of improper payments, despite the use of "for example" in the finding and the inclusion—twice—of the total payments of $24 million. • There is no factual basis in the finding as to anything other than the three "examples."

$5 million was improperly transferred from the Communications Revolving Fund.	**Misstatement of Fact** • Despite clear implication that the improper amount was $5 million, the finding itself notes that only $2 million may have been improper. • $3 million has been validated and remains unquestioned by the auditors. • Remaining $2 million was an estimate of where savings were anticipated, was not spent and thus is an appropriate savings transfer.
$5,000 each was improperly transferred from the Bureau of Personnel and the Bureau of Support Services.	**No Factual Basis** **Immaterial** • Statute requires savings payments to be made from the funds where savings are anticipated to occur. • Savings can occur from activities subject to "lump sum" appropriations—the statute does not exempt such appropriations from recognizing savings. • The two appropriations here, Veterans Assistance and Procurement Policy Board, were a part of the Department's overall appropriation and it was eminently reasonable to anticipate these entities were to realize savings from agency-wide procurement and IT efficiencies.

DEPARTMENT RESPONSE:

The Department disagrees with most of the finding and recommendation. The intended implication, by including both the charts on page 12 and 14, as well as referring to the three bullets on page 13, as "examples" is that all of the $24.8 million in transfers were improper. This implication is wholly without basis.

First, the Auditor General's staff clearly acknowledged at the Pre-Exit Conference that the three "examples" were the only allegations of improper transfers, and the finding cites or provides no facts to contend that any amounts—other than the three referenced on page 13—were anything other than entirely proper. Given that, the charts on page 12 and 14 are irrelevant and misleading.

Second, as to the $5,000,000 payment from the Communications Revolving Fund, $3,000,000 of that amount was validated as telecommunications savings, as the auditors acknowledge. The remaining $2,000,000 was a reasonable estimate of anticipated savings, was not spent, and thus it was reasonable and appropriate to account for this amount as anticipated savings.

Third, the two amounts of $5,000 each for Veterans' Job Assistance and Procurement Policy Board were appropriate anticipated savings.

Fourth, the finding is inaccurate and misleading because it relies on a patent misinterpretation of the underlying requirements regarding these transfers. First, it

contains an incomplete (and therefore misleading) selective reference to the applicable statute, from which it concludes that CMS improperly allowed the Governor's office involvement in the determination of the transfer amounts. However, that sleight-of-hand is easily revealed for what it is by quotation of the statutory provision:

> *Anticipated savings amount will be designated by the Director of Central Management Services and approved by the Governor as savings from the efficiency initiatives authorized by Section 405-292 of the Department of Central Managements Services Law of the Civil Administrative Code of Illinois shall be paid into the Efficiency Initiatives Revolving Fund.*

30 ILCS 105/6p-5 (04-1 Attachment B).

Thus, as the complete provision makes clear, the portion of the finding that contends that the Department improperly "transferred responsibility for determining cost savings . . . to another agency [the Governor's Office]" has absolutely no basis and should be stricken from the finding. The Department complied with the statute: it designated the savings for approval by the Governor's Office. The Department worked collaboratively with the Governor's Office to determine the anticipated savings for several initiatives, just as it was required to do since their approval was statutorily required. If the auditors questioned the Governor's Office role in the savings approval process, it should have communicated with that office to obtain required audit documentation, as required by audit standards. The Department is unaware of any communication between the auditors and the Governor's Office related to this issue.

Fifth, the finding incorrectly applies the statute that it does manage to correctly cite in the finding: anticipated savings amounts should occur "from the line item appropriations where the cost savings are anticipated to occur." And that is exactly what the Department did. Yet, the finding implies that there are additional limitations—without citation to a statute because there is no statutory basis for these limitations: that all cost savings must be from GRF and that cost savings cannot be paid during a lapse period. Attached is a complete copy of the statute (see 04-1 Attachment B), electronically searchable at www.ilga.gov, which clearly does not provide either alleged limitation.

Sixth, the finding references the State Finance Act, presumably implying that CMS has also violated this law, even though there are no facts to support such an alleged violation, and—even more importantly—at the Pre-Exit Conference, the staff of the Office of the Auditor General admitted that it was not alleging such a violation. Again, the inclusion of this reference is at best irrelevant, and at most, deliberately misleading and inappropriate.

Finally, the finding is highly misleading as to the "lapse period" discussion on page 13. The clear implication of this discussion is that payments during the lapse period are improper, which as discussed above, is clearly wrong. But, even worse, the last sentence of that paragraph ambiguously states that "[d]ue to the processing of the payments during the lapse period, it was unclear whether the amounts taken were truly savings or were due to a lack of filling funded vacancies." The finding contains absolutely no support for the conclusions and implications in this statement. There is absolutely no support in the finding (nor was any provided at the Pre-Exit Conference) for the proposition that the

processing of the payments in any way affected the auditors' ability to determine whether the amounts were truly savings or not. These amounts were properly taken as savings and are real savings. Moreover, these payments were made in mid-August 2004. Thus, the auditors had this information available to them for at least several months before issuing this report. There is no reason that the auditors could not and should not have made this determination rather than masking their failure to do so with a factually unsupported and baseless implication.

Finding 04-2

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response

The Procurement Code requires contract files to contain individual scoring sheets.	**Misstatement of Law**
	Inconsistent with Auditor's Procurement Practices
	Inconsistent with Prior Audits
	Misleading Conclusion
	• Neither the Procurement Code nor the Administrative Rules require that contract files contain the scoring sheets of each individual evaluator.
	• Such a requirement is inconsistent with:
	  • Longstanding practice of all agencies under the Procurement Code, and the Administrative Rules.
	  • The Auditor General's own practices.
	  • Has not been a CMS audit finding since 1997, or—to CMS' knowledge—in the audit of any other agency since that time.
	• Individual evaluator's scores are the responsibility of the evaluator to maintain and this information was not required in the files.
	• CMS strengthened the documentation requirements long before this audit report by instituting a new practice in Fiscal Year 05 to maintain this information in the solicitation files. The auditors improperly used this new practice, which CMS put in place after the audit period, as the criteria for this finding.
	• The implication that failure to include individual scoring sheets means that scores were not accurate and the scoring process was corrupt is misleading and there are no facts to support such a contention.

The Procurement Code requires contract files to contain decision memoranda.	**Misstatement of Law** **Inconsistent with Auditor's Procurement Practices** **Inconsistent with Prior Audits** **Misleading Conclusion** • Neither the Procurement Code nor the Administrative Rules require that contract or solicitation files contain written decision memoranda; rather, the only requirement is that there be a "written determination." • CMS contract and/or solicitation files always contain such a written determination. This information was provided to the auditors.

	• Requiring written decision memoranda as the only document that can constitute a "written determination," is inconsistent with:
	  • Longstanding practice of all agencies under the Procurement Code, and the Administrative Rules.
	  • The Auditor General's own procurement practices.
	  • It has not been a CMS audit finding since 1997, nor—to CMS' knowledge—in the audit of any other agency since that time.
	• Contrary to the implication in this finding, CMS' written determinations for each contract do provide more than adequate information about the basis for each award and fully meet Code and Administrative Rules requirements. (See 04-2 Attachment A).
	• Notably, only one of the nine contracts cited by the auditor was protested, and that protest was denied and not appealed. If CMS had not provided adequate basis for its decisions in these contracts, there would have been protests or the one protest would have been successful.

The majority of the Department's contract files do not contain proper documentation.	**Omission of Relevant Facts** **Misleading Conclusion** • External auditors did in fact, as work papers demonstrate, create and test a sample of 25 separate contracts, and found only minor deficiencies; however, this information was deliberately excluded from the report. • As the auditors confirmed at the Pre-Exit Conference, the 9 contracts tested in this and other related findings, are <u>not</u> a statistically valid or representative sample. As external auditors noted, a sample size of less than 25 should not be used. Thus, the implied conclusion in the finding, i.e. that most or virtually all of CMS procurement decisions are undocumented, is inappropriate and misleading.
CMS imposed contract file requirements on other agencies that it didn't follow itself.	**Factual Misstatement** **Misleading Conclusion** • CMS followed the same requirements that existed at the same time as other agencies. • The finding is illogical since the cited requirement did not exist at the time the auditor contends CMS imposed it. • Notably, when CMS informed the auditors of this fact, the auditors refused to put the date of the requirement in the finding.

DEPARTMENT RESPONSE:

The Department respectfully disagrees with this finding because it ignores relevant facts, misstates and/or misrepresents the facts contained in the finding, misinterprets the applicable requirements, and is deliberately misleading.

First, the essence of the auditors' claim regarding lack of contract documentation is that the "judgmentally" selected sample of contracts it reviewed did not contain either evaluator's individual scoring sheets or a decision memorandum. The required assumption for this claim is that there be a legal or regulatory requirement mandating that those two documents be in the files. There is none.

Notably, the auditor did not cite—nor is there—any authority in law or regulation that requires either type of document be created, let alone maintained, in a file. Rather, the rules require that the evaluation scoring information be retained—as the Department has done - and that there be a written determination of an award decision—again, as the Department has done. Thus, the Department has fully complied with the applicable legal and regulatory requirements.

Even if there was a legitimate question as to whether the applicable statutes and rules require either type of document be created, as advocated by the auditors, the auditors are required to give deference to CMS' interpretations under well-established case law, particularly when those interpretations are long-standing and have not been previously challenged.

To accept the auditor's conclusion that these documents are required, one would have to dismiss each of the following facts or conclusions:

1. Neither of the documents is mentioned in any procurement rule or law.
2. Well-established practice under the Procurement Code and Administrative Rules does not require these documents.
3. Not once during any audit in the last 6 years, has the auditor cited this as a finding for CMS, or to CMS' knowledge--*any* agency--despite the fact that most contract and solicitation files do not contain these documents.
4. The Auditor General's own procurement files do not contain these documents.

Thus, it is perhaps understandable why, rather than addressing these facts or conclusions, the auditor argues "best practice" and, even more desperately, cites a "Bid File Checklist—Other Agencies" document as establishing this requirement, and as to that document, criticizes CMS for imposing a requirement on other agencies to maintain individual score sheets although it did not impose such a requirement on itself.

The auditors fail to note the date of the "Bid File Checklist—Other Agencies" document. That document was not created until after the audit period (October 2004) and wasn't imposed as a requirement <u>on anyone</u> <u>by anyone</u> until that date—long after the contracts cited in the finding were awarded. Rather than condemn CMS, the report should have credited the Department for establishing this as a best practice and going beyond the requirements of the Code and Administrative Rules.

The Department brought the date of the document to the auditor's attention at the Pre-Exit Conference, the auditors confirmed they were aware of the date, so the Department requested the auditor to include the date of the document (cited in this finding and a few others) in its report. But, the auditor refused to do so, and also declined at the exit conference to provide *any* basis for its refusal.

In essence what the auditor has done is find a violation of a best practice before the best practice existed. Such an allegation would be summarily dismissed in any other forum because it is not only illogical, but violates well-established audit principles and due process, and is a classic example of prohibited ex post facto lawmaking, a basic tenet of American law, well established in the constitutions of both the United States and the State of Illinois. U.S. Constitution, Article 1, Section 9; Illinois State Constitution, Article 1, Section 16.

Second, the clear and intended implication regarding the lack of individual score sheets in the files is that either the scores were not correctly recorded or that the members of the evaluation committee for each procurement did not provide individual scoring of each proposal. Both of those implications are clearly false. CMS gave the auditors the names of each evaluator for each of these procurements, and there are sheets in each file, which provide the scores for each proposal. Moreover, to remove any doubt about the validity of individual scoring, CMS has asked each of the evaluators to confirm the scoring sheet for each procurement indicating that the scores correctly reflect their individual scoring.[1]

Third, the auditor's finding regarding the lack of decision memoranda is logically and factually flawed. In essence the logic is:

1. 8 of 9 of the files did not contain a decision memorandum.
2. The code requires a written determination of award.
3. A decision memorandum is only permissible written determination of award.
4. Therefore, there was no written determination of award.

As discussed above, the auditor's conclusion is inaccurate and illogical because the Procurement Code and Administrative Rules requires a written determination, which may or may not be a decision memorandum.

This finding is factually flawed because it implies that the contract approval sheet is the only document in the file that could be considered as the written determination. It further implies that since the contract approval sheet is not executed until after the award, it cannot be the written determination. The Department believes the contract approval sheet cannot be that written determination, but there are other documents in the file, which are—and have consistently, been used as such written determination. In cases where the vendor with the highest number of points is selected, the summary scoring sheet meets the statutory requirement for a written determination. This was the case in 6 of the 9 contracts reviewed by the auditor. In the remaining 2 cases cited by the auditors as deficient, sufficient documentation exists in the files to ascertain the reasoning behind

[1] As an aside, if maintaining individual scoring sheets represents a required "best practice," the Department is perplexed as to why the Auditor General does not follow the practice, and why it hasn't cited other agencies for failing to follow this alleged requirement.

the decision (See 04-2 Attachment A). Thus, as the auditors' work papers confirm, such documentation is appropriate contract documentation (See 04-2 Attachment B). The work papers reflect in the procurement summary review that the auditors noted the contract approval sheet as the agency award recommendation document.

Finally, this part of the finding is at odds with the auditor's own procurement practice. In each of the procurements of the Auditor General that CMS reviewed, none contained a decision memorandum. Thus, the auditors' finding that a decision memo is a required "best practice" is disingenuous and hypocritical.

The use of statistical references in the finding is misleading, inconsistent with the audit practice the auditors established in this audit, and excludes audit work actually performed. The only implication from the use of percentages in the finding is to have the reader draw the conclusion that the percentage applies to all CMS contracts, thus leading to the inference that most CMS contracts do not contain required documentation. Such an implication and inference is simply not supported by the finding for the following reasons:

- As the auditor was forced to admit during the Pre-Exit Conference, there was nothing statistically significant about the 9 contracts that serve as the basis for this finding. Indeed, as the auditors' own Sampling Plan for the audit confirms, a minimum sample size of more than 60 would have been required for any statistical sample, and a non-statistical sample would have required a minimum of 25, in contrast to the sample of 9 here. Thus, it is inappropriate and misleading to include any statistical analysis, such as a percentage, in this finding. Indeed, the Sampling Plan confirms this, by saying that an appropriate "sampling plan and methodology are designed to ensure sufficient competent evidential matter . . ."

- In fact, the external auditors, as the work papers clearly show and as admitted at the Pre-Exit Conference, did provide a sample of 25 contracts, and provided the results of the analysis of those contracts, which showed minimal issues. Despite the facts that the work papers also show that the results from this sample were to be included in the findings (See 04-2 Attachment C); these results were omitted and not incorporated into the analysis.

- The auditors stated that their selection of these 9 contracts was "judgmental" and included the contracts related to the efficiency initiatives of CMS. Indeed, there is some support for this contention in the work papers, albeit from a slightly different perspective:

  > CONTRACTS SELECTED FOR TESTING:
  > Keeping in line with the project's purpose of examining the contracting process for initiatives developed by the Governor and CMS, we will select contracts that generally have some degree of reported savings to the award.

  But even assuming that this was an appropriate "purpose" and need not follow the Sampling Plan for the Audit, the auditors didn't follow this judgmental selection.

Rather than selecting all the contracts relating to savings, they selected only some—without rationale or basis (See 04-2 Attachment D). Although noting, in Finding 4-1, that there were initiatives related to the legal consolidation, those contracts were mysteriously excluded from the sample, as well as the temporary services master contract, which showed up as a 10th contract in one draft of the plan, and was tested, but then vanished from the selection of contracts without explanation. Nonetheless, despite clear documentation to the contrary in their own work papers, the auditors continued to deny that this contract was audited even when confronted with this fact at the Pre-Exit Conference. The auditors stated that this contract was removed because it is a master contract. This reasoning perplexes the Department since master contracts are required to follow the same procurement process as other contracts.

Finding 04-3

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response
• The Department used vendors to develop specifications for RFPs. • Vendors who "developed specifications" were routinely awarded contracts.	**Factually Incorrect** **Misleading Conclusion** • CMS used companies to collect data and identify opportunities for improvements within the organization. This information was made available to all bidders. Several of the companies used were never awarded a contract. • It is proper to allow vendors to collect data and identify opportunities for improvement and is not inconsistent with procurement "best practices." • The Auditor General routinely awards contracts to firms who provide similar information, which is inconsistent with its contentions in this finding. Indeed, in several instances, the Auditor General has awarded contracts to such vendors even though they were not the lowest priced. (See 04-3 Attachment A).
• Vendors who "developed specifications" had an advantage over other vendors.	**Factually Incorrect** **Misleading Conclusion** **Omission of Relevant Facts** • CMS did not use vendors who bid on these contracts to develop specifications for RFPs. (See affidavit from CMS Assistant Director, 04-3 Attachment B). • The Department did use the expertise of an outside consultant with no vendor affiliation to assist in the development of one RFP. • The Department did use companies to collect data and identify opportunities for improvements within the organization, but that information was made available to all bidders, and was explicitly and publicly disclosed. • The finding omits both instances in which there were multiple vendors who provided information, but only one (or a different vendor) received an award, as well as instances in which vendors provided such information and didn't get an award at all. • It is proper to allow vendors to collect data and identify opportunities for improvements within the

	organization and is not inconsistent with procurement "best practices." • The Auditor General routinely awards contracts to firms who provide similar information; which is inconsistent with its contentions in this finding. Indeed, in several instances, the Auditor General has awarded contracts to such vendors even though they were not the lowest priced. (See, 04-3 Attachment A)
• The Department acted inconsistently with National Association of State Procurement Officials Guidelines.	**Factually Incorrect** **Misleading Conclusion** • The Department went above and beyond the applicable National Procurement Guidelines because it used a waiver and disclosure process which neither those guidelines, nor the Procurement Code, required. • It is proper to allow vendors to collect data and identify opportunities for improvements within the organization and is not inconsistent with procurement "best practices". • The Auditor General routinely awards contracts to firms who provide similar information; which is inconsistent with its contentions in this finding. (Indeed, in several instances, the Auditor General has awarded contracts to such vendors even though they were not the lowest priced. (See 04-3 Attachment A).
• The Department had a non-State employee review the RFP prior to the release of the RFP. A memo was in the file from this individual suggesting benchmarking as a goal in the RFP. This individual was subsequently named as partnering with the winning vendor.	• CMS provided clear documentation confirming that any involvement with this individual was prior to the contract award. The recommendation made by this individual would not have provided any benefit to the winning vendor or any vendors bidding on the procurement.

DEPARTMENT RESPONSE:

The Department disagrees with the auditor's findings because they are factually flawed and misleading.

The entire premise for this finding, as is clear from the title, is that the Department used vendor personnel to develop specifications for bids, and that it routinely awarded contracts to those vendors. That premise is wholly without basis.

First, CMS did not use *any* of the firms listed in the finding to develop specifications. This is clear in the work papers (Meeting minutes, CMS and OAG: 12/20/04, 1/13/05, 1/20/05, 1/24/05) and it is clear in the RFPs and contracts themselves. Furthermore, although permitted to do so, the Department does not use contractors to develop specifications and then bid on the RFP for which they developed the specification. Rather, as CMS has repeatedly stated and demonstrated, it used these firms to gather factual information that was included as background information in these RFPs—*and which was shared with all other bidders and publicly disclosed.* See the face sheets from each RFP. [2] This undisputable fact alone removes the stated basis for the finding and requires its removal. CMS is providing with this response an affidavit signed by the CMS Assistant Director that attests to the veracity of the Department's claims.

Second, although the use of these firms to collect data and identify opportunities for improvements within the organization is entirely permissible—and the auditors do not contend otherwise—the Department nonetheless went above and beyond any requirements to ensure that the procurement process for these contracts was transparent. It required these firms to fully disclose the information they provided the State to their competitors, negating any de facto advantage in the procurement process. This transparency went beyond not only the requirements of the Procurement Code and Administrative Rules, but it exceeded National Association of State Procurement Officials Guidelines.

Moreover, the auditor's assertion that CMS has not followed procurement "best practices" is disingenuous and hypocritical. As part of the Legislative Audit Commission ("LAC") "Audit Review Program," the Office of the Auditor General participates with certain accounting firms relating to their audit programs. Interestingly, the firms who participate in this Program receive an overwhelming number and amount of auditing contracts from the Auditor General.

According to the LAC's website, these firms include:

BKD, L.L.P.	McGladrey & Pullen
KPMG	PT&W
Clifton Gunderson	Prado & Renteria
McGreal, Johnson, McGrane	Kemper Group
Doehring, Winders Co.	Washington, Pittman & McKeever

[2] The Department did use the expertise of an outside consultant with no vendor affiliation to assist in RFP development.

Below are the amounts and number of contracts the Auditor General awarded these firms.

	FY 04	FY 03
KPMG	$1,800,814 (9)	$1,748,588 (11)
Clifton Gunderson	$1,413,057 (28)	$1,356,540 (16)
Doehring, Winders Co.	$203,076 (5)	$180,324 (6)
McGladrey & Pullen	$1,316,510 (19)	$1,037,701 (20)
Prado & Renteria	$60,486 (2)	$31,142 (4)
Kemper Group	$188,433 (12)	$193,234 (3)
Washington, Pittman & McKeever	$237,686 (7)	$299,943 (6)

In the following cases, these firms received contracts even though they were not the lowest cost bidder:

Audit	Selected Vendor	Cost
Department of Agriculture, Illinois State Fair, DuQuoin State Fair and the Illinois Grain Insurance Corporation	McGladrey & Pullen LLP	$428,000
Northern Illinois University and the University Related Organizations	Clifton Gunderson LLP	$266,543
Illinois Finance Authority	McGladrey & Pullen LLP	$273,200[3] Increased via an "Emergency Procurement" to $366,151

While CMS has no reason to believe that these decisions were anything other than entirely proper -- as were CMS' procurements -- these actions are inconsistent with the auditors' statements in this finding.

Third, the finding omits the following, relevant facts:

- The finding is based on the statistically and otherwise invalid sample of 9 contracts as referenced in response to Finding 04-2. Thus, the finding excludes contracts, like the legal services efficiency contract awarded to Hildebrandt, in which one of the other bidders provided pro bono background information, but was not selected. It also omits the other efficiency contracts—not to mention both: (1) the 25 contracts the external auditors tested, but omitted from their report, and (2) the thousands of other contracts CMS awarded during the audit period—in which no contractor provided information. Thus, it is highly misleading for the finding to use this improperly selective group of contracts to tout percentage statistics that would only lead a

[3] The Procurement Files also note that the OAG accepted this firm's Per Diem of $42.50, even though State Travel Regulations provide for a $28 per diem. In another instance, the OAG paid a $70 per diem.

reasonable reader to conclude that most of the Department's contracts are awarded to vendors who have provided background information. It simply is not true.

- None (0%) of the selected contracts reviewed by the auditors involved a contractor winning a bid it wrote the specifications for, and
- None (0%) of all Department contracts involved such a contractor winning such a bid.

There were multiple potential vendors who provided background information, and not all of them were selected for an award. This fact was conveniently omitted from the finding, including the table on page 20. (i.e. **Procurement Assessment**- BearingPoint, Accenture; **Strategic Marketing**- IEG, Promotion Group Central, Civic Entertainment Group, Sustain Communications, SponsorAid, The New England Consulting Group; **Software Review**- McKinsey, IBM; **Server Consolidation**- McKinsey, IBM.)

Finding 04-4

DEPARTMENT RESPONSE:

The Department disagrees with this finding for the reasons cited below.

Auditor Contention/Implication	Department Response
• The Department used evaluation criteria not stated in the RFP.	**Factually Incorrect** **Omission of Relevant Fact** **Misleading Conclusion** • Each of the evaluations sheets shows that CMS did use the same evaluation criteria in the RFP. • This is demonstrated in Attachment 04-4 A, which compares the criteria in the RFP with the criteria used in the evaluation score sheets. • The use of sub criteria is cited as a "best practice" of the National Association of State Procurement Officers (NASPO). (NASPO Principles, Chapter 9, p. 67 See 04-4 Attachment B) Given that the auditors used the NASPO principles as part of their audit criteria, they should have applied these principles here, but did not. • The auditors' criticism of the Department is disingenuous and hypocritical. The OAG routinely uses sub criteria in its procurement evaluations even though the sub criteria are not delineated in the RFP. • Each of the awards was clearly documented and was made to the vendor, which offered the best value to the State.
• The Department changed the scoring methodology without communicating the changes to bidders.	**Factually Incorrect** **Misleading Conclusion** • The Department did not change scoring methodology without communicating changes to the bidders. • In one instance, the Department did—during a permitted Best and Final Offer ("BAFO") process, clarify pricing. As a result of that process, it became clear that one vendor's proposal was superior, and this was documented in the procurement and contract files.
• The Department awarded a contract to a vendor that didn't receive the highest total points.	**Misstatement of Requirement** **Misleading Conclusion** • The Department is not required to award a contract to a vendor that receives the highest point total if that vendor's proposal is not in the State's best

	interest. • Indeed, standard language in the RFP, used consistently for decades, is that points are used only as a guide. The decision will be based on the best interest of the State. • In the cited instance, the total point scores between the first and second place vendors were very close, and the second place vendor offered a significantly lower price (11-38% lower than the other vendor). • This decision was fully explained and publicly documented in the notice of award and contract approval sheet, providing complete transparency into this decision. (See 04-4, Attachment C). • Not only is this allowable under the Code it is a NASPO best practice. (See 04-4 Attachment B) The OAG used the NASPO principles as part of their audit criteria, which shows that CMS is not only complying with the Code and Administrative Rules but is also following best practices.
• The Department should have gone back to the individual vendors for clarification of pricing so that a valid evaluation and comparison could have been made.	• The Department did go back to the vendor for clarification of pricing during the bid process. The vendor refused to commit a single figure for travel and expenses as well as a blended hourly rate for subsequent work. The vendor provided a letter to the Department supporting their position. This letter was provided to the OAG during the Pre-Exit Conference. • The Department's methodology with regard to assumptions made for expenses and the blended hourly rate were fair and reasonable. • The Procurement Code permits the Department to exercise this kind of judgment under these circumstances and there was no violation of the Code.

Finding 04-5

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response
The Department allowed a vendor to "extensively" revise its proposal during a best and final offer ("BAFO") process.	**Factually Incorrect** • Only 3 items changed from the original proposal to the best and final offer (BAFO).
After the vendor deleted them in the BAFO, CMS added several items back into the agreement, costing the State $5.75 million.	**Factually Incorrect** None of these 3 items were "added back" to the Agreement. • The Department eliminated lease transaction services in order to avoid more than $30 million in potential cost. • IPAM's original proposal obligated it to conduct a facility condition assessment on all 50 million square feet of State-owned property. As part of decreasing its overall contract price by approximately $11 million in its BAFO, IPAM proposed to conduct a facility condition assessment for 10 million square feet of State-owned property and train and assist out-sourced facility managers who would conduct the facility condition assessment on the remaining 40 million square feet and manage the facilities. • Although IPAM's original proposal obligated it to conduct a facility condition assessment on the entire State portfolio and later modified its proposal during its BAFO, the State still obtained approximately $9 million in savings during the best and final process.
The Department improperly provided a BAFO to only one vendor, IPAM.	**Inconsistent Position** **Misleading Conclusion** • As the RFP and Administrative Rules clearly allow, the procuring agency determines the scope and extent of a Best and Final Offer ("BAFO") process. • Even though this is not a Professional and Artistic ("P&A") contract, [see responses to Findings 4-6 and 4-7] the auditor's position is at odds with its conclusion in those findings that this is a P&A contract • If this were a P&A contract, the State could have negotiated a contract with IPAM without going back to them in a BAFO, since IPAM received the

	highest technical points. Thus, the auditor's position in this finding is directly at odds with its position in other findings in the report.
The Department improperly allowed the composition of the joint venture to change.	**Factually Incorrect** • The joint venture changed because the New Frontier Company pulled out due to a conflict of interest that was disclosed during CMS' review of the original proposal. • CMS' evaluation did not change based on the ownership structure of the vendor. The original proposal specifically named Mesirow Stein as CMS' point of contact for the provision of services due to its supreme expertise in the fields of consulting, project management and development services. Therefore, the competency to perform the services under the proposal never changed.
The Department improperly allowed revision of the performance guarantee.	**Misleading Conclusion** • As part of the BAFO process, IPAM was requested to enhance their original proposal and, as part of that request, the performance guarantee was modified. • A thorough review of the items contained in both the performance guarantee contained in the original proposal and in the BAFO proves that the modifications allowed were clearly advantageous to the State.
The Department deleted 40 million square feet of facility condition assessment after the BAFO, but later awarded this work to IPAM in a sole-source contract.	**Factually Incorrect** • IPAM's original proposal obligated it to conduct a facility condition assessment on all 50 million square feet of State-owned property. • As part of decreasing its overall contract price by approximately $11 million in its BAFO, IPAM proposed to conduct a facility condition assessment for 10 million square feet of State-owned property and train and assist out-sourced facility managers who would conduct the facility condition assessment on the remaining 40 million square feet and manage the facilities. • The State obtained approximately $9 million in savings during the best and final process. Moreover, the State achieved additional savings by awarding a $2.25 million sole source contract to IPAM because the State is receiving this service at less than market rates.
The Department allowed the contract to be increased by $3.5 million of lease transaction support services,	**Misleading Conclusion** • The allegation is inaccurate and illogical: lease transaction and lease administration services are not the same service. Thus, the implication that CMS

even though the contract provided IPAM to provide Lease Administration Services.	allowed IPAM to charge twice for the same thing is simply wrong.

DEPARTMENT RESPONSE:

The Department disagrees with the finding and recommendation. The auditors assert that the Department improperly allowed a vendor to "extensively" revise its proposal during the Best and Final Offer (BAFO) process. CMS does not agree that the charges made in the BAFO were extensive. In fact, only three items changed – Facilities Condition Assessment, Lease Administration and Performance Guarantee. Taken in the context of the entire scope of work, these changes did not individually or collectively "extensively" alter the proposal.

The auditor further implies that the revisions to the BAFO cost the state $5.75 million. This implication is not based in fact:

- The Department eliminated Lease Administration in order to avoid adding more than $30 million in cost. It is standard in the industry for lease administrators to pass on their fees to landlords. This in turn, would create an opportunity for the landlord to turn around and pass the increased cost on to the state. In order to avoid this potential cost CMS decided to perform the lease administration function itself.

- In its BAFO, IPAM proposed to conduct Facility Condition Assessments on 10 million square feet of property as opposed to the 50 million square feet that was in the original proposal. The remaining 40 million square feet would be assessed by outsourced facility. Subsequent to the award, but before contract execution, CMS decided not to outsource this function. Since in-house facility managers lacked the skills and experience to do facility assessment, the decision was made to sole source the remainder of the Facility Condition Assessment to IPAM, which had experienced teams in place already. The resulting sole source contract of $2.25 million pales in comparison to the $9 million savings the state obtained in the BAFO process.

- Transaction Administration was not substantially changed between the original proposal and the BAFO.

The auditor's assertion that it was improper for the IPAM joint venture to change is also without merit. While it is true that the New Frontier Company pulled out due to a conflict of interest, this had no impact on the Department's evaluation of the proposal.

Finally, the Department disagrees with the implication in the finding that removal of the Performance Guarantee was not in the State's best interest. During the BAFO process, the performance guarantee was modified to the State's advantage. Specifically, the BAFO retained a provision that at risk 10% of the Asset Management Fee and other items i.e. if not achieved, IPAM would only receive 90% of the fee; removed a potential

fee of $500,000 if IPAM completed some transactions and removal of incremental bonuses to be paid to IPAM if the savings goals were met. In total, these changes strengthened the performance guarantee to the state's advantage.

Findings 04-6

DEPARTMENT RESPONSE:

The Department disagrees with this finding for the reasons set forth below.

Auditor Contention/Implication	**Department Response**
• The Department failed to publish that 4 contracts were not awarded to the lowest bidder. • CMS failed to include subcontractor information in these same contracts.	**Misstatement of Facts and Rules** **Deliberate Omission of Relevant Facts** **Misleading Conclusion** • As the auditors note, the cited requirements (publishing the fact of non-award to the lowest bidder, and subcontractor information) *only apply if the contracts are Professional & Artistic (P & A) contracts within the meaning of the Procurement Code*. (See 04-06 Attachment A).These contracts are not. They: o Were clearly designated as non-P&A RFPs. o Did not specify a particular level of education, experience and technical ability as required if they had been P&A contracts o Used non-P&A evaluation criteria o Did not require the vendor to have a professional license. (e.g., the OAG's procurement files for P&A contracts contain a copy of such professional licenses). o Bulletin notices were posted as non-P&A. It is excruciatingly clear that these were not considered P&A contracts, and could not have been under the Code. Notably, the auditors failed to consider or even recognize the existence of any of these facts. o The auditors' principal basis for the conclusion that these are P&A contracts is that the Comptroller's internal processing rules (SAMS) take the position that they are. However, that position is inconsistent with the Procurement Code and Administrative Rules, which take precedence over the Comptroller's internal processing rules. o The auditors' work papers – in stark contrast to their findings – note that it is the Procurement Code and Administrative Rules, which determine this, not the SAMS rules cited in the finding. [22E Contractual Services-P&A Contract Controls; Section C. Partial Listing of

	Statutes and Regulations See 04-6 Attachment B]. o The Auditor General's legal counsel was aware of this position since 2002, and at a meeting to discuss this did not disagree with CMS' conclusion that, despite the Comptroller's SAMS rules, these types of agreements were not P&A contracts. o That understanding is reinforced by the fact that this is the first time the Auditor General has taken this position, and it has not made this a finding in any other Department audit in the last 6 years, despite being directly aware of it at least as long ago as 2002. o To be a P&A contract, the services must be those provided by licensed professionals. These contracts did not require professional licenses.

Findings 04-7

DEPARTMENT RESPONSE:

The Department disagrees with this finding for the reasons set forth below.

Auditor Contention/Implication	**Department Response**
• The Department failed to publish that 4 contracts were not awarded to the lowest bidder. • CMS failed to include subcontractor information in these same contracts.	**Misstatement of Facts and Rules** **Deliberate Omission of Relevant Facts** **Misleading Conclusion** • As the auditors note, the cited requirements (publishing the fact of non-award to the lowest bidder, and subcontractor information) *only apply if the contracts are Professional & Artistic (P & A) contracts within the meaning of the Procurement Code* (See 04-06 Attachment A). These contracts are not. They: o Were clearly designated as non-P&A RFPs. o Did not specify a particular level of education, experience and technical ability as required if they had been P&A contracts o Used non-P&A evaluation criteria o Did not require the vendor to have a professional license. (e.g., the OAG's procurement files for P&A contracts contain a copy of such professional licenses). o Bulletin notices were posted as non-P&A. It is excruciatingly clear that these were not considered P&A contracts, and could not have been under the Code. Notably, the auditors failed to consider or even recognize the existence of any of these facts. o The auditors' principal basis for the conclusion that these are P&A contracts is that the Comptroller's internal processing rules (SAMS) take the position that they are. However, that position is inconsistent with the Procurement Code and Administrative Rules, which take precedence over the Comptroller's internal processing rules. o The auditors' work papers – in stark contrast to their findings – note that it is the Procurement Code and Administrative Rules, which determine this, not the SAMS rules cited in the finding. [22E Contractual Services-P&A Contract Controls; Section C. Partial Listing of

	Statutes and Regulations See 04-6 Attachment B]. o The Auditor General's legal counsel was aware of this position since 2002, and at a meeting to discuss this did not disagree with CMS' conclusion that, despite the Comptroller's SAMS rules, these types of agreements were not P&A contracts. o That understanding is reinforced by the fact that this is the first time the Auditor General has taken this position, and it has not made this a finding in any other Department audit in the last 6 years, despite being directly aware of it at least as long ago as 2002. o To be a P&A contract, the services must be those provided by licensed professionals. These contracts did not require professional licenses.

Finding 04-8

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response

• The Department was not timely in executing most/all contracts.	**Factually Incorrect**
	Deliberate Omission of Relevant Facts
	Misleading Conclusion
	• More than 90% of Department contracts are executed in a timely manner.
	• Selection of sample of 9 of CMS' most complex contracts provides a completely misleading picture and is; by the auditors' own admission, not a representative—but a "judgmental" sample.
	• Thus, its use of a percentage statistic in its report is invalid and misleading. The correct statistics are than less than 10% of all CMS contracts in the most recent reporting period are late filed.
	• This percentage is less than the percentage of many other entities, including the General Assembly and the Treasurer's Office.
	• But, even as to these 9 agreements, the auditors ignored the fact that there were timely interim agreements that were executed with the vendors that covered their services until the final contracts were completed. The auditors specifically identified and tested these agreements (as the work papers demonstrate), but they omitted them, without basis, from the report (See 04-8 Attachment A).
	• At the Exit conference, the auditors contended that these interim agreements were not really agreements, but that position is directly contradicted by:
	  • Their own work papers that tested these as contracts.
	  • Their own test for determining whether something is a binding contract (see discussion below).
	  • Even a cursory review of the contracts demonstrates that they are binding contracts.
	  • These interim agreements met standard contract law requirements. See 04-08 Attachment B.

• The Department allowed most/all vendors to begin work without a contract: • Compromising accountability to	**Factually Incorrect** **Legally Incorrect** **Deliberate Omission of Relevant Facts** • In the overwhelming majority of situations, CMS does not permit a vendor to work prior to formal

public.
• Increase likelihood that state's interests are not protected.
• Increases likelihood that state's resources wasted/ misused.
	execution of a contract.
	• In the limited situations in which the Department permits a vendor to begin work without a contract, it is in the best interest of the State to do so.
	• Even as to those limited situations, CMS and the State are fully protected from any liability as clearly provided in the RFP and well-established law.
	• Notably, the findings omit, without basis, the language from the RFP and other related documents that the Department provided to support this conclusion.
	• There is no compromise of public accountability since the award and contract are publicly filed, and no payments can be made to the vendor until and unless a contract is executed: all work is done at the vendor's own risk.
	• The State's interests are fully protected because vendors have no authority to bind the state, and because the state's only obligation under the contract is to pay the amounts owed and no payments can be made until a contract is executed and filed at the Comptroller's office.
	• There is no waste or misuse of State resources. In fact, quite the contrary:
	  • The State cannot and does not make any payments under the agreements until the contract is executed and filed, and
	  • In all cases, the vendors are performing work that would otherwise have to be performed by the State, thus conserving the State's resources, not wasting them.

• Vendors can represent the State and thus expose the state to liability.	**Clear Misstatement of Law and Fact** • Vendors have no legal capacity to bind the state to anything before or even after a contract is signed, and the auditors have cited no authority to the contrary. • The auditors' position is based on mere speculation of potential liability. • Notably, the auditors failed to cite any instance in which the State has suffered such liability, because there is none.
• State loses negotiating leverage when contract not signed before work begins.	**Factually Incorrect** **Misleading Conclusion** • Auditors' position is based on speculation, without any facts to support this speculative conclusion. • Cites CMS FAQ document (post-dating the audit period) that suggests the State has more negotiating leverage.

	• However, the FAQ document is misapplied in this situation. Because the State has no obligation to pay unless or until there is an executed contract, the negotiating leverage is in favor of the State and against the vendor, which must have a contract to be paid.
• The Department held agencies to a different standard.	**Factually Incorrect** **Deliberately Misleading Conclusion** • False. Relies on post-audit dated document (See Response to Finding 04-2). • Auditors changed the tense of one word when this time issue was brought to their attention, but it doesn't change the clear implication of the statement.

DEPARTMENT RESPONSE:

The Department disagrees with this finding because it is based on incorrect facts, and deliberate and misleading omissions of relevant facts.

Once again, the auditors have misrepresented the significance of their finding, relying on a "sample" that is neither statistically valid, nor consistent with their own Sampling Plan. And, once again, the auditors do not include the data on this issue from a sample done by their external auditors, which, as stated in their work papers, should have been included. (See, Response to Finding 4-2).

Moreover, the information in the finding is inaccurate and omits a relevant fact. For two of the nine initiatives cited in the finding, CMS *did have* a valid contract in place covering the work. In those situations, CMS – as a further means of protecting the State and locking the vendors into key terms – negotiated, executed and filed with the Comptroller, interim agreements. It is clear that the auditors had these contracts, tested against them, and in fact considered them to be contracts. But, for whatever reason, there is absolutely no discussion of these contracts in their findings.

When asked about this omission, the auditors contended that these really weren't contracts, but that is patently false:

- First, the auditors own work papers classified these agreements as contracts and performed certain tests against them. If they didn't think they were contracts, they wouldn't have so characterized them or tested against them. See 04-8 Attachment A.

- Second, the auditors own work papers contain the elements that define a contract, and each of the interim agreements, have each of those elements. See 04-8 Attachment B.

- Third, if these were not contracts, the Comptroller's Office would not have accepted them and would not have let State funds be paid against them.

- Finally, despite being asked, the auditors could not provide a single basis for their conclusory statement that these were not contracts.

Here, because late filed contracts are filed by the Office of the Comptroller, with a copy to the Office of the Auditor General, the Department does have (and the Auditor General should have had) information about the number of the Department late filed contracts and the total number of contracts. That data reveals that for Fiscal Year 2003 and 2004:

	Fiscal Year 2003	Fiscal Year 2004
# of Late Filed Contracts	176	104
Total # of Contracts	1185	1064
% of Late Filed Contracts	14.8%	9.7%

Source: Auditor General website, www.state.il.us/auditor. Link Late Filing Affidavits Comptroller's data warehouse database contracts filed by agencies Fiscal Year 03 and 04 reports.

To put these numbers in perspective, several entities had a much greater percentage of late filed contracts:

	% of Late Filed Contracts Fiscal Year 2003	% of Late Filed Contracts Fiscal Year 2004
CMS	14.8%	9.7%
General Assembly	30.4%	18.1%
Treasurer	30%	32.5%

Source: Auditor General website, www.state.il.us/auditor. Link Late Filing Affidavits Comptroller's data warehouse database contracts filed by agencies Fiscal Year 03 and 04 reports.

Moreover, from a total dollar perspective only 2% of the total dollar amount of all CMS Procurement involved late-filed contracts. In any event, there is nothing improper about late-filed contracts. Indeed, the applicable rules contemplate that this will occur. Indeed, late-filed contracts are usually more likely to occur for complex agreements that take longer to negotiate, draft and execute. Indeed, that is exactly the case with the 9 contracts cited in the finding.

Why would CMS or other agencies or offices allow a vendor to begin work prior to the execution of the contract? The answer is simple:

- First, all of the contracts cited in the finding relate to efficiency initiatives designed to help remedy the State's fiscal crisis. Each day the work was delayed, savings to the State and its taxpayers, were also delayed. In short, beginning the work as soon as possible benefited the State and its taxpayers, and thus, without doubt, was in the best interest of the State.

- Second, there was no harm to the State by allowing the work to begin. As the RFPs clearly provide, any work begun prior to the execution of the contract was solely at the contractor's own risk. Notably, the finding omits this crucial fact, including:

    - The irrefutable fact that, until the contract is executed and filed with the Comptroller's Office, *there is no financial risk of the State to the contractor since the State cannot pay a single penny to a vendor until and unless such a contract has been executed and filed*.

    - There is no risk to third parties since the contractor cannot bind the state and is not an "agent" of the State.

    - There is no risk to waste of state resources, since the contractors performed work that the State would have had to perform anyway. Indeed, rather than their being risk to the State in this regard, there is benefit since, as stated in the first bullet point, until and unless there is a contract, the State has absolutely no legal obligation to pay for any work performed by the contractor.

Notably, the auditors and their counsel, despite being asked, have cited no case law to support their speculative belief of this risk[4], nor have the auditors provided any analysis of the scope or significance of this risk. Indeed, as to these nine contracts, there is *nothing* in the audit finding that suggests (or would support a conclusion) that there was any harm whatsoever to the whatsoever—because there was no such harm. Rather, as discussed above, there was benefit to the State.

[4] CMS provided on-point case law to the auditors legal counsel (a copy of which is attached See 04-8 Attachment C) that further supports this rather obvious proposition. The response was that there was no certainty that this result would apply here. While that may perhaps be true, certainty is not the standard for the audit, nor is it a reasonable standard. Any one could speculate that some court, somewhere, some day might ignore well-established precedent. But just because of that remote possibility, it is unreasonable to conclude that a state agency cannot rely on that precedent today, particularly when there is no case law to the contrary, and the Auditor General's counsel has not cited any.

Finding 04-9

DEPARTMENT RESPONSE:

The Department has carefully reviewed this finding, which alleges that the Department did not properly monitor vendor expenses before paying them. With one minor exception, discussed below, CMS concurs with this finding, and is particularly outraged with regard to the inappropriate submission and approval of expenses related to the Asset Management contract. That a vendor would have the audacity to submit such obviously inappropriate expenses for reimbursement and that Department personnel would fail to have examined those expenses thoroughly before paying them is truly incredible. The Department greatly appreciates the Auditor General bringing this matter to our attention, and to ensure that taxpayers are made whole for this unfortunate situation, and that it will not occur again, the Department has taken the following actions:

- The Department has demanded that the vendor pay back *every penny* of questionable expenses.

- The Department is reviewing each and every expense submitted for reimbursement to CMS by the vendor, and will not pay any expenses until such review is completed and the amounts are determined to be properly payable.

- The Department is reviewing the terms of the contract with the vendor to determine whether further action against the vendor is warranted.

- The Department is conducting an internal investigation into how these amounts were paid and, after such an investigation, will take disciplinary action, against those employees who violated Department rules and practices regarding payment of these expenses.

Again, the Department is outraged and embarrassed by these improper payments, but the taxpayers of Illinois can rest assured that each and every penny that has been improperly paid will be recovered and that CMS will ensure that only properly payable amounts are reimbursed in the future.

In addition, the Department is implementing more stringent procedures and approval requirements, including approval of expense reimbursement by the Chief of each CMS bureau before they are submitted for payment. This will ensure that expenses are properly paid and that accountability for such payment is clearly established at the senior management level at CMS. Again, CMS appreciates the Auditor General's work in discovering these improper payments.

The findings also questioned expense reimbursement for four other contracts executed by our Bureau of Communications and Computer Services. CMS agrees with the auditors that those expense reimbursement should also be examined in detail to determine whether they were appropriately incurred. While standard industry practice (including the Bureau's historical practice) was to monitor expenses in the aggregate, the Department agrees that this practice was not and is not enough. The Department does take minor

exception to the implication from the chart on page 36 that all the expenses for these contracts are questionable. However, the Department does agree that detailed documentation has not been obtained. Indeed, CMS has already begun the process of obtaining and reviewing all of the detailed documentation. To the extent that the documentation does not support the payment of expenses, the Department will conduct the same detailed review it is undertaking with respect to the asset management contract.

Finding 04-10

DEPARTMENT RESPONSE:

The Department disagrees with the finding for the reasons set forth below.

Auditor Contention/Implication	**Department Response**
• The Department failed to adequately determine the amount of savings it expected agencies to realize when billing for State agencies. • Not all agencies were billed for initiatives.	**Omission of Relevant Facts** **Factually Incorrect** **Misleading Conclusion** • The State Finance Act clearly states that the scope of CMS' charge was to identify "…. where cost savings are **anticipated** to occur." The Department took efforts to anticipate as precisely as possible where cost savings would occur. Thus, CMS did adequately determine the amount of savings. • The auditors seek to hold the Department to a different standard than the statutory one: that the Department must identify were cost savings occurred, and then using this unilaterally re-written standard, find that the Department failed to meet the correct statutory requirement. Such a conclusion is not only contrary to the statute, but also illogical. • Given the cost savings are anticipated, not actual, a measure of deviation is reasonable.
• Governor's Office has no role in determining cost savings.	**Clear Misstatement of Law** • Legislation clearly provides that the Governor's Office must approve all savings amounts.
• Efficiency cannot occur from funded vacant headcount reductions.	**Clear Misstatement of Law** **Misleading and Illogical Conclusion** • Nothing in legislation suggests that efficiency cannot occur from funded vacant headcount reductions. • Indeed, headcount reductions are one of the key ways of realizing efficiencies clearly recognized by the legislature. • If agencies backfilled against headcount that was counted as savings, then any finding should be lodged against such an agency, not CMS. CMS fully complied with its statutory obligations.

Finding 04-11

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response
Statewide savings goals for efficiency initiatives are achieved solely by vendor actions.	**Omission of Relevant Facts** **Misleading and Illogical Conclusion** • The savings goals, as outlined by the Governor's Fiscal Year 2005 Proposed Budget, are defined using Fiscal Year 03 Appropriation Levels as the base and appropriately include reductions that are driven independently from direct vendor actions (see 04-11 Attachment A). • Department officials confirmed the definition of savings to auditors during interviews and provided the budget letter sent by the Governor's Office that made savings permanent in agency budgets for Fiscal Year 2005 (See 04-11 Attachment B).
Validated savings should not change when additional data is verified with agencies through the course of the year and following the close out of lapse period and federal funding participation claims.	**Omission of Relevant Facts** **Misleading and Illogical Conclusion** • Department officials confirmed to auditors that the intent of the validation form is to verify the savings methodology, and that as new information is made available the spreadsheet is updated.
McKinsey personnel must be specifically listed as a "Team Member" to document involvement for each savings category.	**Omission of Relevant Facts** **Misleading and Illogical Conclusion** • Department officials confirmed to auditors that they did not require McKinsey personnel to be listed because they were involved in all validations as a matter of course, per their contracted responsibility. • During a meeting between the OAG and the Department and as documented in the OAG's work papers ((Meeting Minutes, CMS and OAG: 12/20/04), the Department stated that documentation is available to support McKinsey's involvement in the savings categories. • The OAG only requested to review an example.
McKinsey staff was not involved in copier renegotiation.	**Omission of Relevant Facts** **Misleading and Illogical Conclusion** • McKinsey's work on the RFP as documented in September and October of 2003, **was prior** to the vendor approaching the State to renegotiate rates, directly resulting from the RFP work and the desire to avoid losing the contract. (See 04-11, Attachments D & E).
DHS staff initiated the	**Omission of Relevant Facts**

improved capture of third party and federal payments prior to McKinsey involvement.	• Work paper review conducted by the agency documented that DHS stated they did preliminary analyses and review, but did not produce actual results. • DHS survey documents also validate that the savings methodology took into account historical collection rates thereby measuring only incremental savings as produced by McKinsey's direct involvement.
DHS savings must be collected in Fiscal Year 04 to be validated.	**Omission of Relevant Facts** **Clear Misstatement of Law** • Auditors omitted the fact that savings were collected in Fiscal Year 2005. • Under accrual accounting principles and the specific provisions of the State Finance Act, the date of recognition of the right to recovery occurs upon the determination of the liability. • Section 25 of the State Finance Act exempts the Medicaid program from the general State fiscal year requirements. (See 04-11 Attachment F).
Documentation to support the Fleet Management Initiative savings goal was not provided.	**Omission of Relevant Facts** • Department officials stated that the goals of $1 Million in Fiscal Year 04 and $2.6 Million in Fiscal Year 05 are stated as contract requirements in the Maximus contract as $3.6 Million in Fiscal Year 05 due to the date of contract implementation. • Fiscal Year 05 was not covered under this audit.

DEPARTMENT RESPONSE:

The Department disagrees with the finding and recommendation. The finding implies, by including the chart on page 47, that vendors were directly responsible for achieving the entire amount of statewide savings goals. This implication ignores the definition of savings as documented by the Governor's Fiscal Year 2005 Proposed Budget and described to the auditors during multiple agency interviews.

> The definition of savings for the various efficiency initiatives, as documented in the Fiscal Year 2005 State of Illinois Proposed Budget, is estimated using the Fiscal Year 03 appropriations as base.
>
> Savings are therefore defined as reduced appropriated spending. In addition to vendor initiated actions, savings include cuts made permanent in agency budgets through GOMB processes, frozen funded vacancies, field office closures, and across-the-board GRF cuts, to name a few.

The finding implies that the vendors' performance and resulting payments are tied to independently achieving the entire amount of the statewide savings goal. The table on

page 47 does not clearly represent the fact that McKinsey was the only vendor where the performance and payment was tied directly to the statewide savings goal.

A copy of a GOMB letter with instructions to agencies that makes savings from procurement, IT, vehicles and functional consolidations permanent reductions to the budget in Fiscal Year 05 and beyond was provided to the auditors to further document the definition of savings.

Finding 04-12

DEPARTMENT RESPONSE:

The Department agrees with the recommendation that the previous nine recommendations of the OAG's management audit of the State's Space Utilization Program should be fully implemented. In fact, the Department has taken steps since the September 2004 follow-up to the February 2004 Space Utilization Management Audit towards completion of implementation of these recommendations and offers the following:

Strategic Planning (Recommendation #4)—

The Department disagrees with the auditor's assertion that this recommendation has not been implemented. The auditors seem to base their conclusion on their inability to locate one document titled "Strategic Plan". The Department contends, however, that its entire approach to completely reorganize property and facilities management and space utilization and asset management is in fact a strategic plan.

Agency Reporting of Real Property to CMS (Recommendation #1)—

In October 2004, the Revised Form A was completed and is attached (see 04-12 Attachment A). Although the auditors admit that Form A was developed as a draft as of September 21, 2004; the Form is currently being utilized. Further the Annual Real Property Utilization Report was filed with the General Assembly on February 1, 2005.

Accuracy of Master Record (Recommendation #2)—

CMS has revised Form A to develop an accurate accounting of land and buildings owned by the State. The Department is considering whether to establish a new reporting procedure for wetlands and flood mitigation.

Finding 04-13

DEPARTMENT RESPONSE:

The Department agrees with the finding and recommendation. CMS is pursuing the services of an actuarial consultant to calculate post employment benefits and incurred but not recorded healthcare claims on a consistent basis. This consultant has significant experience working with the CMS Group Insurance program. CMS is confident that the collaborative relationship with this industry expert will ensure the development and implementation of a consistent methodology for the development, determination of, and reporting these liabilities.

Finding 04-14

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response
Audits conducted during Fiscal Year 04 were not sufficient to fully comply with the Fiscal Control and Internal Auditing Act (30ILCS 10/2003).	**Misleading Conclusion** • During the nine months of the audit period the IOIA was in existence 26 agency legacy audit plans were evaluated for overall FCIAA coverage. • An interim audit plan was developed and resources allocated to complete audits necessary for statewide compliance. • Failure to complete the plan does not equate to non-compliance when the results prove full coverage for the 26 agencies when considered in whole, as was intended by Executive Order 2003-10.
An effective process to identify new major computer systems or major modifications of existing computer systems was not in place.	**Misleading Conclusion** • The auditors were provided with the process for identifying these projects. • The auditors failed to provide any instances of major system implementations or major modifications that were not reviewed.

DEPARTMENT RESPONSE:

The Department and the Illinois Office of Internal Audit (IOIA) disagree with the auditor's conclusion of noncompliance with the Fiscal Control and Internal Auditing Act.

The Governor's Executive Order 2003-10 established the IOIA. The IOIA was charged with creating a consolidated internal audit function for 36 agencies. From October 1, 2003 to June 30, 2004 an interim audit plan for Fiscal Year 04 was developed to provide adequate coverage for the 26 consolidated agencies with a legacy internal audit function. The planned methodology for complying with the Act was discussed with the Auditor General and his senior staff on October 21, 2003 (See 04-14 Attachment A). This planned methodology was also presented to the Legislative Audit Commission on November 18, 2003 (See 04-14 Attachment B).

Although all of the audits in the interim plan were not completed, a sufficient number of audits were completed at the 26 agencies to achieve compliance with the Act. For example, although the planned grant audits at the Capital Development Board and the Department of Corrections were not completed, during the two year period Fiscal Year 03 - 04 grant audits were completed at the Department of Agriculture, Banks and Real Estate, Children and Family Services, Commerce and Economic Opportunity, Emergency Management, Employment Security, Historic Preservation, Human Services, Natural Resources, Public Aid, State Police, Transportation, and Veterans Affairs.

Additionally, since the consolidation, the IOIA has conducted or has planned to conduct timely audits of all on-going major system implementations or major modifications. The external auditors have been provided with the process for identifying these projects. Further, the external auditors failed to provide any instances of major system implementations or major modifications that were not reviewed. Furthermore, as acknowledged in the audit report, the IOIA corrected the stated inefficiencies during the audit period. Lastly, the IOIA did reach out to the agencies for which we have audit responsibility in correspondence dated December 4, 2003 (See 04-14 Attachment C).

The IOIA believes that its statewide risk-based approach will ensure that appropriate coverage is given to all agencies for which it has audit responsibility. By having the internal audit function removed from the agencies, the IOIA is better able to maintain independence and conduct audits that under the previous structure would have been difficult to conduct. With the consolidation of the internal audit function, many agencies are receiving coverage, which previously received no internal audit coverage. Conducting internal audit work on a risk-based approach provides a more efficient and effective use of the State's audit resources.

Finding 04-15

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response
The Illinois Administrative Code requires the Surplus Warehouse to maintain a statewide inventory control system for all State agencies.	**Misstatement of Law** • There is no requirement that the Department develop a statewide inventory control system. • Indeed, the rules recognize that state agencies may have separate control systems, because it requires those agencies to give the Department access to those systems**.** The auditors acknowledged this fact, but failed to modify language in the finding. (See 04-15 Attachment A) i.e. Title 44, Section 5010.520
The Illinois Administrative Code required the Surplus Warehouse to offer equipment for the use of any State agency.	**Misstatement of Law** • Offering the equipment for the use of a State agency is only one of the permissible methods of disposal.
The Department did not receive adequate compensation for some surplus property.	**Misstatement of Law** **Misleading Conclusions** • Requirement is that CMS sell the property to the highest bidder—it is compelled to sell the property at the highest bid price. • Property is sold on site at public auction to the highest bidder. • No reference in the Illinois Administrative Code provision for "adequate compensation" and criteria for it as sale is to the highest bidder as indicated above. • Auditors acknowledged this, including that there were no instances of non-compliance with the statute, but refused to modify the finding. (See 04-15 Attachment B) • Finding notes that iBid helped increase compensation while complying with bidding requirement, but fails to state that CMS implemented iBid. • The comparison in audit report failed to note that the computers that sold ($60-$100) on iBid were given a thorough review and included testing, review of system components, as well as other information that was presented to the on-line bidders.

The Department did not comply with the Data Security on State Computers Act.	**Misstatement of Law** **Misleading Conclusions** • The Department implemented a policy in compliance with Data Security on State Computers Act, but it is the responsibility of the owning agency surplusing the equipment to comply with the Statute and with the Department memorandum. • It is misleading to say that violations of the Act can result in several potential consequences for the State, such as public embarrassment, security breaches, and possible lawsuits if sensitive personal data is disclosed.

DEPARTMENT RESPONSE:

The Department disagrees with both the finding and recommendation.

With respect to the Department having a poor inventory system, CMS disagrees. First, there is no requirement that the Department develop a statewide inventory control system. The state currently has 12 different inventory systems, independent of each other. Consolidation of these various inventory systems at this time is not cost effective. Over the years, various agencies have developed their own inventory systems, and migrated from the Department's centralized system known as the Central Inventory System (CIS). CIS is a mainframe-based operation maintained by the Department. However, only 25 smaller agencies participate and actively utilize CIS. Furthermore, Section 5010.520 requires agencies maintaining automated systems to make access available to the Department's Property Control Unit. To date, no agency has been successful in developing an on-line inquiry system for the Department's review. This lack of integration coupled with the diversity of systems in state government makes it impossible to electronically monitor the state's entire inventory; thus, Property Control is forced to rely on a paper system.

The Department disagrees with the auditor's assertion that the Illinois Administrative Code required the Surplus Warehouse to offer equipment for the use of any State agency. While the Department notifies agencies of available property throughout the year, Section 5010.610 of the Illinois Administrative Code does not require the Department to maintain a comprehensive listing of all property available for transfer. State Surplus receives 750,000 to 1,000,000 pieces of property each year. The Department markets to each and every agency property control liaison a schedule of when property is available for transfer. Staff of several hundred agencies, boards and commissions, routinely shop the warehouse every month and transfer back property.

The Department also disagrees with the auditor's claim regarding the sale of computer equipment. The Department has met and/or exceeded the Illinois Administrative Code, Section 5010.750. Property is generally sold "on-site" at public auction, to the highest bidder. The Department cannot regulate a public auction bid process and therefore cannot set pricing or the value of the items sold at public auction. The Department has

been innovative and has offered additional for the sale to the public, but law does not require these new methods for sale. The Department exceeded the barrier of public auction sales in August 2003, by introducing its initiative designed to increase revenues. "iBid" (ibid.Illinois.gov), the state's first on-line auction service, was created and designed to increase sales of surplus property. To date, State Surplus has sold more than 2,000 items generating more than $300,000 in sales supplement to the on-site public auctions. iBid has had approximately 7,000 registered bidders since its introduction.

The computers identified and compared in this finding were computers sold at both public auctions: "on-site" versus computers sold "on-line". However, the comparison failed to note that those computers that sold ($60-$100) on iBid were given a thorough review and included testing, review of system components, as well as other information that was presented to the on-line bidders. Conversely, the review failed to note those computer systems that sold ($10) from the warehouse floor "on-site" did not receive the evaluation or testing to determine condition. On-site sales are sold "as is, where is;" and thus, bring far less than those sold on-line. Furthermore, in January of this year, the Department approved a schedule for state surplus auctions that includes development of more on-line property auctions. "LIVE Audio & Video" Web casts across the Internet are scheduled to begin mid-summer. The Department anticipates the Internet will increase participation from the average 175 on-site visitors, to the broader Internet market--much as "iBid" has. iBid now has approximately 7,000 registered bidders after 18 months of operation. Conducting Surplus Auction, LIVE Web cast of auctions on the Internet is the next step in the on-line evolution for surplus property sales.

Finally, the Department disagrees with the auditors' legal interpretation of the Data Security on State Computers Act and the Department's overall accountability with that Act. The Department has taken several proactive steps to assist agencies in addressing this requirement. The Department developed policies and guidelines based on the law, working with agencies to ensure compliance with the Act. The Department works continuously to educate state agencies with respect to the applicable laws. The Department receives on average 10,000 computers at surplus each year. The law requires every hard drive of any processor, server, or network device be cleared of all data and software before being sold, donated, or transferred. Public Act 93-0306 requires each state agency, board, commission—not the Department as the State Surplus Agency--to overwrite the previously stored data on a drive or disk at least ten (10) times and certify in writing the process is complete. On September 18, 2003, the Department issued a memorandum to all agencies, boards, commissions and universities, outlining the laws requirements and compliance with P.A. 93-0306. The Department instructed agencies how to meet their statutory burden. The Department requires a label be affixed to the face plate of every processor so staff can easily identify that the hard drive has been wiped, who wiped it, what software was used to over-write it, and the date completed.

By statute it is clear that the owning state agency surplusing the equipment has the responsibility, not the Department, to ensure the process is complete. The Department staff has been fully trained to look for the labels affixed to the front of PCs. Despite the Department's efforts, agencies have been negligent in packaging systems for identification upon arrival at the warehouse. Any computer identified not containing the label is refused at the warehouse and returned to the agency for action.

Even if there was a legitimate question as to whether the applicable statutes and rules require CMS to develop a statewide inventory control system for all state agencies, require Surplus Warehouse to offer equipment for the use of any State agency, require the Department to receive adequate compensation for some property, and that CMS did not comply with the Data Security on State Computers Act, as advocated by the auditors, the auditors are required to give deference to CMS' interpretations under well-established case law. It has frequently been held that the interpretation of a less than totally clear statute by the administrative body charged with its application is persuasive. *Cronin v. Lindberg*, 66 Ill.2d 47 (1976); *Radio Relay Corp. v. Illinois Commerce Com.*, 69 Ill.2d 95 (1977); *Rend Lake College Federation of Teachers, Local 3708 v. Board of Community College, District No. 521*, 84 Ill.App.3d 308 (5th Dist. 1980); Davis *v. City of Evanston*, 257 Ill.App.3d 549 (1st Dist. 1993).

Finding 04-16

DEPARTMENT RESPONSE:

The Department disagrees with this finding. It was not required to file these reports with the General Assembly until the reorganizations were effective. As the Department explained to the auditors, the reorganizations under Executive Orders 2003-10 and 2004-2 have not been completed. CMS will file the reports with the General Assembly when those reorganizations are complete.

This disagreement focuses on the language of the statute, which provides that:

> Every agency created or assigned new functions pursuant to a reorganization shall report to the General Assembly not later than 6 months after the reorganization **takes effect** and annually thereafter for 3 years.

15 ILCS 15/11 (emphasis added).

The auditor's position is that "takes effect" means that date the reorganization was "authorized." The plain meaning of "takes effect" cannot mean the date the reorganization was authorized.

First, the dictionary definition of "takes effect" is "the condition of being in full force or execution." American Heritage College Dictionary, 4th edition, p. 446. Because these reorganizations had not been in full force or execution in Fiscal Year 2004, they had not yet "taken effect."

Second, the purpose of the reporting requirement is to report on the after-effects of the reorganization, including the economies effected by the reorganization and the effects on State government. This purpose supports an interpretation that "takes effect" has the plain dictionary definition meaning, i.e. that the reorganization is in full force or has been executed. Until such reorganization has occurred, i.e. taken effect, its effect could not be determined and thus could not be reported to the legislature.

Third, the definition of reorganization in the statute also supports this interpretation. The requirement relates to the "reorganization" taking effect. What is a reorganization under the statute? It is a "transfer" a "consolidation" an "abolition" or an "establishment" of something. Thus, reorganization could not take effect until one of those actions has taken effect, i.e. occurred.

Finally, the term "takes effect" must be interpreted in light of the other provisions of the statute. For example, Section 6 of the Act provides that lawsuits and other court actions commenced by or against an agency or official do not abate by reason of the "taking effect" of any reorganization under the Act. "Taking effect" in this section can only mean having been executed or being in full force and effect, since until such time, there would logically be no affect on such a lawsuit or court action. Put another way, the mere authorization of a reorganization, as opposed to its being effectuated, would have no effect on a lawsuit or action against or by an agency or officer, thus this provision would not apply.

Nonetheless, to end the debate on this matter, CMS will file reports on the current status of the reorganizations by the end of the fiscal year.

Finding 04-17

DEPARTMENT RESPONSE:

The Departments agrees with the finding and recommendation. The Department acknowledges its responsibility to the Illinois Office of the Comptroller for preparation of financial statements under the guidelines established in the Statewide Accounting Management System (SAMS) Manual. However, it is important to note that in Fiscal Year 2004, the Office of the State Comptroller, for the first time, took ownership of the process and prepared the initial draft of the financial statements for the Department to review. Had the Department had total control over the preparation of its financial statements as it had in years prior to Fiscal Year 2004, it is confident that the reports would have been completed on time. Delays occurred, many of which were outside the Department's control. The Department believes throughout the Fiscal Year 2004 GAAP Package and financial statement process that its staff worked proactively and collaboratively with the Illinois Office of the Comptroller and the external auditors and will continue to do so in the future in order to establish effective communication of financial information as timely as possible.

Finding 04-18

DEPARTMENT RESPONSE:

The Department agrees with the recommendation contained in the audit report. Although, all of the equipment and vehicles, cited as missing or having inaccurate property records have been located and accurately recorded, CMS will continue to review and refine its controls and procedures to ensure property and equipment is properly safeguarded and property records are complete and accurate.

Finding 04-19

DEPARTMENT RESPONSE:

The Department agrees in part with the finding and recommendation. The Department agrees to continue to make all CMS employees aware of the State of Illinois Vehicle Guide and all rules and regulations related to the use of a state or personal vehicle for business purposes.

However, the Department disagrees with the facts of the finding. The finding indicates that 19 of 41 accident reports or 46% were not filed on a timely basis. The Department informed the auditors and provided documentation that three of the reports were filed on time but contained a computer input error. The auditors ignored this information.

The Department also disagrees with the auditors' conclusion that the untimely reporting of accident reports in Fiscal Year 2004 put the State at an increased financial risk. While it is true that the State paid $15,108 to settle all 41 accident claims, only one of the 41 claims was filed late. That claim, which was only five days late, was a mere $3,699. Not only did the auditors omit this fact from the report, they infer that the untimely filing of accident reports caused the $15,108 paid by the State. The auditors not only misstated the facts – only $3,699 was paid on this single late claim; but provided no support to conclude that timeliness played a role in the settlement amount. Finally, it is unclear to the Department why, what is at the very most a $3,699 issue (and more likely a non-issue), was elevated to a material finding.

Finding 04-20

DEPARTMENT RESPONSE:

The Department agrees with the recommendation and for Fiscal Year 2005, the Board has been meeting quarterly.

It should be noted, however, that although the Director of CMS is the Chairman of the Board, he is only one member of the Board and is therefore a minority for quorum purposes. The Board is a separate legal entity created by the State Finance Act (30 ILCS 105/12-1), which is independent of CMS enabling legislation. Therefore, any findings pertaining to the Board should ultimately be directed to the Board and not the Department. To that end, the filing of reports is ultimately the responsibility of the Board and not the Department or the Director of CMS in his capacity as Director.

Finding 04-21

DEPARTMENT RESPONSE:

The Department agrees with the finding, but not with the recommendation. In addition, the Department questions the materiality of the finding. The Department has procedures in place requiring approval of vendor invoices within 30 days of receipt. The Department reinforces compliance with this Prompt Payment provision on a monthly basis. Certain CMS Internal Service/Revolving Funds are subject to tight cash management to monitor the inflows and outflows from these funds. Most notably, the State Garage Revolving Fund, where 88% of the exceptions occurred, has been a historically cash flow challenged fund. Fiscal Year 2004 was no exception. In order to manage cash appropriately, a payment cycle has been established to monitor revenues and expenses. In the Department's Accounting system, an approval of a voucher acts as release to the Illinois Office of the Comptroller for payment. To comply with the provision of this specific Administrative Code section, in all instances regardless of cash fund balance in the cash challenged internal service funds, would be fiscally irresponsible as payments would be processed without regard to cash in the internal service funds which could jeopardize payment of vital expenses, including but not limited to payrolls. This could cause potential liabilities that would exceed prompt payment interest accrued.

Finding 04-22

DEPARTMENT RESPONSE:

The Department agrees with the finding and recommendation. The Department's Payroll unit will work with the Department's Internal Personnel unit to develop effective procedures to ensure employees on a leave of absence are removed from payroll in a timely manner.

The State has recovered the overpayment exceptions identified in the audit report.

Finding 04-23

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response
• The Department does not maintain time sheets in compliance with the Ethics Act. • The Department's payroll system not in compliance with the Ethics Act.	**Factually Incorrect** **Misleading Conclusion** • The Department's payroll system meets the timekeeping requirement of the Ethics Act. • Employee work hours are tracked on a daily basis. • Official Leave Forms document time off.
• The Ethics Act does not mandate Governor's Office to adopt and implement personnel policies.	**Ignoring State Law** **Misleading Conclusion** • "The Governor shall adopt and implement those policies for all State employees of the executive branch not under the jurisdiction and control of any other executive branch constitutional officer." 5 ILCS 430/5-5(a).
• Executive Ethics Commission can be ignored for guidance on compliance with the Ethics Act.	**Ignoring State Law** **Misleading Conclusion** • Executive Ethics Commission is now functional. • Personnel policies mandate in the Ethics Act, 5 ILCS 430/5-5(c) and the authority granted to the Executive Ethics Commission 5 ILCS 430/20-15 empowers the Executive Ethics Commission with issuing guidance and interpreting the Act for compliance purposes.

DEPARTMENT RESPONSE:

The Department disagrees with the finding that time sheets are not maintained in compliance with the State Officials and Employees Ethics Act.

The Department is following a memo from the Governor's Office, dated January 13, 2004, on implementation of the time sheet requirements that stated that the CMS payroll system meets the time sheets requirement in the Ethics Act.

The Department maintains timekeeping database system that tracks employee work hours on a daily basis. When an employee takes a day or few hours off, the employee is required to document the time on an official leave form, which is entered into the database.

"The Governor shall adopt and implement those policies for all State employees of the executive branch not under the jurisdiction and control of any other executive branch constitutional officer." 5 ILCS 430/5-5(a). The opinion of the Auditor General's Chief Legal Counsel is erroneous since the Governor's Office memo is policy that states the

memo “is not a formal legal opinion, but it will hopefully help you make some implementation decisions for your agency”. The Governor’s office left implementation decisions to the agencies.

Pursuant to the personnel policies mandate in the Ethics Act, 5 ILCS 430/5-5(c) and the authority granted to the Executive Ethics Commission 5 ILCS 430/20-15, the Commission is empowered with issuing guidance and interpreting the Act for compliance purposes.

The Governor’s Office wrote a memo on December 16, 2004, requesting guidance on the adequacy of the timekeeping policy. The letter referenced that the Governor’s Office, after Ethics Acts became law, determined that due to the short timeframe within which to implement a timekeeping system and the impact on union employees, that the timekeeping administered by CMS and DHS tracked employees’ daily time. An employee must submit an official leave request for any type of leave taken and in the increment allowed for the specific type of leave.

Further, the Executive Ethics Commission issued an informal opinion stating that the CMS payroll system, for purposes of timekeeping, is in compliance with the Ethics Act.

Finding 04-24

DEPARTMENT RESPONSE:

The Department agrees with the recommendation to file all Travel Headquarters Reports with the Legislative Audit Commission.